BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of

Ameritech Operating Cos., Revision, Tariff F.C.C. No. 2
Transmittal No. 1664

BellSouth Telecommunications, Inc., Revision, Tariff F.C.C. No. 1
Transmittal No. 1119

Nevada Bell Telephone Co., Revision, Tariff No. 1
Transmittal No. 174

Pacific Bell Telephone Co., Revision, Tariff F.C.C. No. 1
Transmittal No. 383

Southern New England Telephone Co., Revision, Tariff F.C.C. No. 39
Transmittal No. 963

Southwestern Bell Telephone Co., Revision, Tariff F.C.C. No. 73
Transmittal No. 3249

PETITION OF TIME WARNER TELECOM INC. AND COMPTEL TO REJECT OR, IN THE ALTERNATIVE, SUSPEND AND INVESTIGATE TARIFF FILINGS

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January 11, 2008
BEFORE THE
Federal Communications Commission
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PETITION OF TIME WARNER TELECOM INC. AND COMPTEL TO REJECT OR, IN THE ALTERNATIVE, SUSPEND AND INVESTIGATE TARIFF FILINGS

Time Warner Telecom Inc. ("TWTC") and COMPTEL, by its attorneys and pursuant to Sections 201(b) and 204(a)(1) of the Telecommunications Act of 1996 and Section 1.773 (47 C.F.R. § 1.773) of the Commission's rules, hereby petitions the Commission to reject or, in the alternative, suspend and investigate various tariff transmittals¹ (hereinafter "broadband tariffs") which were submitted by AT&T on January 7, 2008.

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¹ Ameritech Operating Cos., Revision, Tariff F.C.C. No. 2, Transmittal No. 1664 (filed Jan. 7, 2008); BellSouth Telecommunications, Inc., Revision, Tariff F.C.C. No. 1, Transmittal No. 1119
AT&T's tariff transmittals seek to "withdraw certain broadband transmission services...as required by the Commission upon use of the forbearance relief pursuant to FCC Memorandum Opinion and Order No. 07-180..." This request must be rejected because withdrawal of the tariffs in question would violate the express conditions of the AT&T/BellSouth Merger Order and, in any case, some of the tariffs concern expanded interconnection services for which AT&T did not seek forbearance and which the FCC did not address in the Forbearance Order.

TWTC demonstrated in detail in its petition for declaratory ruling regarding the Forbearance Order that AT&T may not withdraw any broadband tariffs until the expiration of the conditions established in the Merger Order. In those conditions, AT&T committed not to "give effect to" any forbearance that "diminishes" or "supersedes" its obligations or responsibilities under any of the other conditions set forth in the order. As TWTC has explained in its petition for declaratory ruling special access conditions two through nine, by their terms, require the maintenance of broadband tariffs. Moreover, many conditions, such as condition


\footnotesize{2 See, e.g., SWBT Revision, Cover Letter at 2.}

\footnotesize{3 See AT&T Inc. and BellSouth Corporation Application for Transfer of Control, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007) ("Merger Order").}

\footnotesize{4 Petition of AT&T Inc. for Forbearance and Petition of BellSouth Corporation for Forbearance, Memorandum Opinion and Order, 22 FCC Rcd 18705 (2007) ("Forbearance Order").}

\footnotesize{5 See Emergency Petition for a Declaratory Ruling of Time Warner Telecom Inc., WC Dkt. No. 06-125 (filed Nov. 21, 2007) (attached hereto as Appendix A).}
seven, which requires mediation or accelerated docket treatment of disputes concerning tariffed services, would be rendered meaningless without publicly available tariffs. For these reasons, eliminating AT&T’s broadband tariffs as AT&T proposes in its transmittals would “diminish” or “supersede” these merger conditions. Accordingly, AT&T’s request to withdraw its broadband tariffs must be rejected.

The text of the *Forbearance Order* and the Commissioners’ accompanying statements reinforce the conclusion that AT&T cannot withdraw its broadband tariffs until the expiration of the merger conditions. In the *Forbearance Order*, the Commission reaffirmed that AT&T’s existing tariffing, price freeze, pricing flexibility, and facilities discontinuance requirements continue to apply to AT&T, holding that “[t]he limited forbearance relief granted herein does not affect in any way the full force and effect of the merger conditions adopted in the *AT&T/BellSouth Order.*” *Forbearance Order* ¶ 2. Most importantly, in a statement issued with the Commission’s order, Commissioner Robert M. McDowell explained that AT&T has a continuing obligation to comply with its “existing tariffing, price freeze and facilities discontinuance requirements for non-TDM-based business broadband services” until December 29, 2010 when its merger commitments expire. *Id.*, Separate Statement of Commissioner McDowell at 1. Given Commissioner McDowell’s statement and the fact that Commissioners Copps and Adelstein voted against the petition, a majority of the Commissioners believed that the broadband tariffs may not be withdrawn until 2010.

The statements of the sponsors of the *Merger Order* conditions support the same conclusion. At the time of that order, AT&T was subject to dominant carrier tariff obligations. Yet both Commissioners Copps and Adelstein concluded that more comprehensive regulation, in addition to existing tariff-filing obligations were necessary to “rectify years of decisions that
have undercut competition” (Merger Order, Concurring Statement of Commissioner Adelstein at 1) and to compensate for the Commission’s failure to comply with its “obligation to encourage the kind of fair competition necessary to protect consumers.” Merger Order, Concurring Statement of Commissioner Copps at 1. The purpose of the Merger Conditions was therefore to make the existing tariffing regime more effective with price controls and other regulations. There is no question that eliminating the tariff requirements upon which these requirements were based would “diminish” or “supersede” AT&T’s obligations under the special access conditions.

AT&T’s transmittals must also be rejected because AT&T is seeking to withdraw tariffs for services, specifically its expanded interconnection cross connect services, which were not addressed in the Forbearance Order. For example, SWBT’s revised FCC tariff No. 73, § 25.7.5(A) proposes to detariff the “interconnection cross connect” for OC3, OC12, OC48, OC192, OPT-E-MAN, GigaMAN, DecaMAN and CSME services.⁶ These cross connects are provided pursuant to SWBT’s “expanded interconnection” obligations. AT&T did not ask for and did not receive forbearance from its expanded interconnection obligations. This is unsurprising, as the FCC has long held that these services are not subject to competition (and therefore would likely not qualify for forbearance) because they provide a connection between the ILEC’s network and the CLEC’s network in the central office.⁷ Only the ILEC is capable of providing such a service. The availability of these interconnection services is a necessary

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⁶ Compare SWBT Revision, Tariff § 25.7.5(A), with Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Base Tariff Transmittal, Tariff § 25.7.5(A) (filed Dec. 4, 2007) (“SWBT Base Tariff”).

prerequisite to special access competition. Moreover, the obligation to provide expanded interconnection services is an obligation of all “Class A” carriers (of which AT&T is one), not just dominant carriers. Therefore, the FCC’s determination in the Forbearance Order to treat AT&T as non-dominant with respect to the services for which it received forbearance has no effect on its ongoing obligations to tariff its expanded interconnection services.

In addition, the FCC has an ongoing investigation of the ILECs’ expanded interconnection tariffs, many of which are for tariffs that AT&T proposes to eliminate. For example, SWBT’s own access tariff states that “On April 19, 2005, SWBT issued Transmittal No. 3057 proposing to enhance OPT-E-MAN service by introducing an OPT-E-MAN 1 Gbps Cross Connect to the Expanded Interconnection Service in F.C.C. No. 73, Section 25....” and that a 2005 “bureau order suspends the proposed revisions ...for one day from the May 4, 2005 effective date and initiates an investigation.” The investigation of SWBT’s OPT-E-MAN tariff was rolled-into the Commission’s ongoing expanded interconnection tariff

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8 See id. ¶ 93 (“We believe that interconnection to the broadest array of special access services is in the public interest because it facilitates competition for all these services. The initial tariffing requirement was limited to DS1 and DS3 services only to promote rapid implementation...”).

9 See 47 C.F.R. § 64.1401 (“Every local exchange carrier that is classified as a Class A company...and that is not a National Exchange Carrier Association interstate tariff participant...shall offer expanded interconnection for interstate access services at their central offices that are classified as end offices or serving wire centers, and at other rating points used for interstate special access.”).

10 *SWBT Base Tariff*, Tariff at Supplement No. 59.
investigation. If AT&T is permitted to withdraw its expanded interconnection tariffs, the
FCC’s investigation will be irreparably undermined.

For the foregoing reasons, the Commission should reject or, in the alternative, suspend
and investigate AT&T’s transmittals which seek to withdraw its broadband tariffs.

Respectfully submitted,

[Signature]

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January 11, 2008

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11 See Ameritech Revisions to Tariff F.C.C. No. 2; Southwestern Bell Telephone Company
Revisions to Tariff F.C.C. No. 73, Order, 20 FCC Red 8538, ¶ 2 (2005) ("[w]ith respect to the
rates, terms and conditions affecting Expanded Interconnection Services, Transmittal Nos. 1460
and 3057 are suspended for one day and will be subject to the investigation initiated in the
Virtual Collocation Tariff Suspension Order, the Expanded Interconnection Tariff Order and the
New Expanded Interconnection Service Suspension Order.").
APPENDIX A
BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of

Petition for AT&T Inc. for Forbearance
Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services

WC Docket No. 06-125

Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services

EMERGENCY PETITION FOR
A DECLARATORY RULING OF TIME WARNER TELECOM INC.

November 21, 2007
Pursuant to Section 1.2 of the Commission’s regulations, 47 C.F.R. § 1.2, Time Warner Telecom Inc. (“TWTC”), by its attorneys, respectfully files this emergency petition seeking an expedited declaration clarifying the scope of the forbearance relief granted in the above-captioned proceedings in light of the merger commitments assumed by AT&T Corporation and legacy BellSouth Corporation (collectively, “AT&T”) and in light of the terms of the forbearance order itself.

INTRODUCTION AND SUMMARY

In the conditions adopted in connection with the FCC’s approval of the AT&T-BellSouth merger, the merging parties committed not to “give effect to” any forbearance that “diminishes” or “supersedes” any of the other conditions set forth in the order. In the order adopted in this proceeding, the Commission partially granted AT&T relief from dominant carrier regulation with regard to non-TDM services such as Ethernet and OCn services. In that forbearance order, however, the Commission reaffirmed that AT&T’s existing tariffing, price freeze, pricing flexibility, and facilities discontinuance requirements continue to apply to AT&T, holding that “[t]he limited forbearance relief granted herein does not affect in any way the full force and effect of the merger conditions adopted in the AT&T/BellSouth Order.”[1] Moreover, in a statement issued with the Commission’s order, Commissioner Robert M. McDowell explained that AT&T has a continuing obligation to comply with its “existing tariffing, price freeze and facilities discontinuance requirements for non-TDM-based business broadband services” until December 29, 2010 when its merger commitments expire. Id.

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On November 15, 2007, however, AT&T sent a letter advising broadband providers that it "will no longer be offering new Pricing Flexibility Contract Tariffs for certain services."\(^2\) This is a clear violation of AT&T’s duty to continue to offer non-TDM-based broadband services under tariff until the expiration of the merger conditions. AT&T has also indicated that it will no longer comply with its existing tariffing or pricing flexibility requirements for non-TDM-based business broadband services.\(^3\)

As TWTC explained during the AT&T forbearance proceedings, AT&T has a continuing obligation to comply with its merger commitments.\(^4\) The Commission expressly adopted these commitments to protect the "public interest."\(^5\) Section 10 of the Communications Act only allows the Commission to grant forbearance when doing so would further the "public interest."\(^6\) Accordingly, the Commission cannot eliminate the merger commitments without running afoul of Section 10 of the Communications Act and the Administrative Procedure Act.\(^7\) As part of its

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\(^2\) See AT&T New Non-Dominant Broadband Forbearance Pricing Contract Process Letter (Nov. 15, 2007) (attached as an Exhibit hereto) ("AT&T Nov. 15 Letter").

\(^3\) See Letter from Jack Zimman, AT&T, to Marlene Dortch, WC Docket Nos. 06-125, 06-74 (Oct. 10, 2007) ("AT&T Oct. 10 Letter").


\(^5\) See In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, ¶¶ 19-22 (2007) ("AT&T/BellSouth Order") (the Commission adopts narrowly-tailored, transaction-specific conditions to ensure that the public interest is served by the transaction); 47 U.S.C. §310(d) (2007); see also 47 U.S.C. § 214 (2007).

\(^6\) See AT&T Forbearance Order at ¶ 16 (forbearance only where it would further the public interest); 47 U.S.C. § 160(a) (2007).

obligation to comply with the merger commitments, AT&T must maintain its tariffs for all special access services, including Ethernet and OCn services. The Commission conditioned the grant of forbearance to AT&T on its elimination of tariffs for the services subject to the forbearance order. Thus, compliance with the merger conditions in this case precludes AT&T from taking advantage of any part of the forbearance order. In light of AT&T's recent announcement, TWTC respectfully asks the Commission to promptly clarify that AT&T must continue to offer its Ethernet and OCn special access services subject to dominant carrier regulation, including the existing tariffing, price freeze, pricing flexibility, and facilities discontinuance requirements applicable today, until the expiration of the AT&T-BellSouth merger conditions.

DISCUSSION

Tariffs are vital to maintaining competition and protecting the public interest. Threats to competition derive not only from higher tariff rates but also from discriminatory tariff rates that favor affiliated parties as well as other favored customers. For example, the "filed-rate doctrine" exists "to prevent discrimination among consumers" purchasing tariffed services. As the Supreme Court has explained, "[i]t is that anti-discriminatory policy which lies at 'the heart of the common-carrier section of the Communications Act."9

In adopting the merger commitments, the Commission required AT&T to comply with its existing tariffing requirements for non-TDM-based business broadband services until December 29, 2010. See AT&T/BellSouth Merger Order, App. F; AT&T Forbearance Order, Statement of

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8 Bryan v. BellSouth Commc'ns, Inc., 377 F.3d 424, 429 (4th Cir. 2004); see Hill v. BellSouth Telecomms., Inc., 364 F.3d 1308, 1316 (11th Cir. 2004); Marcus v. AT&T Corp., 138 F.3d 46, 58 (2d Cir. 1998).

Commissioner Robert M. McDowell. As discussed above, the merger commitments forbid AT&T from "giv[ing] effect to" any forbearance grant that would "diminish" the merger commitments. A number of merger commitments, however, would be diminished if AT&T failed to comply with its existing tariffing requirements. In particular, the AT&T/BellSouth Merger Order's "special access" conditions impose a host of tariff-related requirements. Eliminating these tariffs would gut the effectiveness of the merger commitments and thereby "diminish" AT&T's obligations under the merger commitments. See AT&T/BellSouth Merger Order, App. F, Forbearance Condition No. 2. Accordingly, the Commission should issue a declaration requiring AT&T to continue to comply with its existing tariffing requirements and continue to file tariffs with the Commission. Moreover, under the terms of the AT&T Forbearance Order, AT&T must offer any tariffed service subject to the full panoply of dominant carrier regulation.

I. The Merger Commitments Require That AT&T Continues To File And Maintain Dominant Carrier Tariffs With The Commission.

As an initial matter, the merger commitments themselves require AT&T to continue to file tariffs with the Commission. For example, Special Access Condition No. 2 states that AT&T shall not increase rates for services offered "pursuant to, or referenced in TCG FCC Tariff No. 2." Id., App. F, Special Access Condition No. 2. Accordingly, Condition No. 2 expressly requires AT&T to retain TCG FCC Tariff No. 2.

Similarly, the rate freeze and rate reduction requirements in Special Access Condition Nos. 5 and 6 impose limits on AT&T's ability to increase the prices for OCn and Ethernet. Id., App. F, Special Access Condition Nos. 5 & 6. These provisions are expressly drafted as requiring implementation through filed tariffs. Condition No. 5 states that "[n]o AT&T/BellSouth ILEC may increase the rates in its interstate tariffs, including contract tariffs,
for special access services that it provides in the AT&T/BellSouth in-region territory, as set forth in tariffs on file at the Commission on the Merger Closing Date, and as set forth in tariffs amended subsequently in order to comply with the provisions of these commitments.” Id., App. F, Special Access Condition No. 5 (emphasis added). Special Access Condition No. 6 likewise requires that AT&T reduce the Ethernet services offered in its “tariffs.” Id., App. F, Special Access Condition No. 6 (emphasis added). Indeed, as modified by the March 26, 2007 Order on Reconsideration, Condition No. 6 requires AT&T to reduce its rates for DS1, DS3 and Ethernet by filing “all tariff revisions necessary to effectuate” this requirement and by maintaining reduced rates “until 39 months after the day the AT&T/BellSouth incumbent LECs file with the Commission the final tariff revisions necessary to effectuate this commitment.”

Moreover, such tariffs must be dominant carrier tariffs. If AT&T were to cease filing dominant “interstate tariffs” and “contract tariffs,” then various regulations, such as notice periods before the tariff becomes effective, would be eliminated. This would gut the effectiveness of special access rate protections. See 47 U.S.C. § 203 (2007); 47 C.F.R. §§ 61.1-61.193. Under the dominant carrier tariffing process, customers are provided 15 days notice before a tariffed rate increase becomes effective (see 47 U.S.C. § 204(a)(3) (2007)) and can petition to have the tariff suspended before the rate change goes into effect. This allows the customers to seek a suspension and investigation of the tariff, pursuant to which the customer receives a refund for rates deemed unlawfully high. A rate increase for a service subject to non-dominant tariff filing requirements need only be filed on one day’s notice. See 47 C.F.R. § 61.23. This essentially means that the purchaser must file a complaint challenging the rate after the tariff takes effect and wait many months (see Order ¶ 36) before the complaint is resolved. In the meantime, the customer must pay substantial sums to AT&T for what may be an illegally
priced service. Moreover, because the burden of proof falls on the complainant in a formal complaint, the customer is less likely to be able to recoup these losses than would be the case if it had the opportunity to challenge the tariff, for which the carrier bears the burden of proof, before it takes effect. 10 Such an outcome would obviously “diminish” AT&T’s obligations under these merger commitments in violation of the AT&T/BellSouth Merger Order. 11 Accordingly, AT&T has a continuing obligation to file and maintain dominant carrier tariffs with the Commission for its special access services, and the Commission should issue a declaration requiring it to do so.

II. Eliminating Tariffs Would “Diminish” The Effectiveness Of The Rate Reduction And Rate Freeze Requirements In the Merger Conditions.

Eliminating tariffs would also “diminish” the effectiveness of the rate reduction and rate freeze requirements in the merger conditions. See id., App. F, Special Access Condition Nos. 5-6. As discussed above, tariffs are essential to preventing rate discrimination in favor of affiliated entities and against unaffiliated entities. 12 Accordingly, AT&T has an obligation to continue to comply with its existing tariffs under the AT&T/BellSouth Merger Order.


11 See AT&T/BellSouth Merger Order, App. F, Forbearance Condition No. 2 (prohibiting AT&T from giving effect to any forbearance order that would diminish its merger commitments).

12 Bryan v. BellSouth Commc’ns, Inc., 377 F.3d 424, 429 (4th Cir. 2004); see Hill v. BellSouth Telecomms., Inc., 364 F.3d 1308, 1316 (11th Cir. 2004); Marcus v. AT&T Corp., 138 F.3d 46, 58 (2d Cir. 1998). Indeed, Footnote 7 of the merger commitments states that the reference to services provided to AT&T’s separate affiliates in the merger commitments “shall not be construed to require AT&T/BellSouth to provide any service through a separate affiliate if AT&T/BellSouth is not otherwise required by law to establish such separate affiliate.” See id., App. F, Special Access Condition No. 4 n.7. Such a statement is conspicuously absent with regard to AT&T’s tariff-filing obligations, yielding the obvious inference that the conditions should be interpreted as requiring continued tariff-filing obligations.
Without tariffs, AT&T could make an offer to an affiliated customer without other customers having any knowledge of or ability to benefit from such an offer. Most obviously, AT&T could charge itself low rates for Ethernet/OCn special access as an input to finished Ethernet/OCn services that include both special access services and other components, such as long-haul service. Absent tariffs, competitors could find themselves in a price squeeze, and the rate reduction and rate freeze requirements in the merger conditions would effectively be useless to a competitor seeking to rely on the services subject to the merger condition rate regulations as a means of competing with AT&T.

Price squeezes are hardly a remote concern for the Commission. In fact, concerns over BOC price squeezes, including AT&T-led price squeezes, caused the Commission to condition the grant of non-dominant treatment of BOC in-region long distance services, including long-distance Ethernet and OCn services, on the BOCs imputing to their retail long-distance services the rates for special access.\(^{13}\) Absent tariffs, such imputation requirements would be unenforceable for special access services, because there would be no set special access rate – only a series of negotiated rates, each one potentially different from the next. The threat to competition is very real. As TWTC demonstrated in the AT&T forbearance proceeding, AT&T’s wholesale Ethernet and OCn prices far exceed competitive wholesalers’ rates.\(^{14}\) It is logical to infer that AT&T’s rates are far above AT&T’s costs. Accordingly, absent tariffs, AT&T could retain these high wholesale rates for competitors while charging itself only the costs of providing the services. In doing so, AT&T could engage in a classic price squeeze by


\(^{14}\) See e.g., Letter of Thomas Jones, Counsel, Time Warner Telecom, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 06-125 (filed Sept. 18, 2007).
charging prices for its downstream retail Ethernet/OCn service that are lower than its upstream special access Ethernet/OCn prices. Nor is there any basis in the AT&T Forbearance Order for concluding that facilities-based provision of Ethernet/OCn special access would prevent AT&T from engaging in this conduct. This is because the FCC never analyzed the level of competition in this market. It instead relied exclusively on the level of competition in the downstream, mostly long distance, retail market as the basis for granting AT&T forbearance. See AT&T Forbearance Order ¶¶ 21-22.

Absent tariffs, no statutory provision prevents AT&T from engaging in harmful competitive practices, such as price squeezes. For example, although Section 202(a) prohibits unreasonable discrimination in charges and services, this provision does not impose a meaningful constraint on the conduct of a non-dominant carrier that is free of tariff-filing requirements. See, e.g., Orloff v. FCC, 352 F.3d 415 (D.C. Cir. 2003) (upholding FCC order allowing non-dominant mobile wireless carriers to engage in widespread discrimination).

Thus, eliminating tariff-filing requirements would give AT&T carte blanche to lower prices for OCn and Ethernet services selectively in a manner that would harm competition. Eliminating tariffing would “diminish” the effectiveness of the rate freeze and rate reductions in the AT&T-BellSouth Merger Order, because it would allow AT&T to offer itself much steeper rate reductions than are available to competitors. In other words, the rate reductions and freezes required by the merger commitments would be substantially less meaningful in the absence of tariff-filing obligations. Indeed, in the absence of tariffing obligations, the merger commitments could only be effective if AT&T had been required to charge Ethernet/OCn at cost-based rates – thus eliminating the risk of a price squeeze. AT&T, however, currently has no obligation to do so.
Accordingly, AT&T has an obligation to continue to comply with its existing tariffing obligations under the AT&T/BellSouth Merger Order. Failing to comply with existing tariffing obligations would diminish the merger commitments, which the Commission designed to promote competition in the telecommunications marketplace.

III. AT&T's Failure to File Tariffs Would Also "Diminish" the Effectiveness of Other Merger Commitments.

AT&T's failure to file tariffs would also "diminish" the effectiveness of other merger commitments. For example, Special Access Condition No. 3 prohibits AT&T from providing any "special access offerings" to its wireline affiliates that are not available to other similarly-situated special access customers "on the same terms and conditions." This provision would be virtually impossible to enforce absent tariffs. Without tariffs, neither similarly-situated customers nor the Commission itself would know what special access services AT&T has provided to its wireline affiliates. They would instead be left to trust AT&T to comply with the requirement. Indeed, the very existence of merger conditions such as Special Access Condition No. 4 shows that trusting AT&T (in light of its unwholesome incentives) is insufficient. Condition No. 4 requires AT&T to certify that it has provided "contract tariffed services" to "unaffiliated customer[s]" before providing services to a Section 272 affiliate. This provision demonstrates that the Commission determined that enforcement through certification and tariff-filing obligations was necessary to give meaning to Condition No. 3. Accordingly, eliminating AT&T's tariffing obligations would diminish Special Access Condition No. 3, and it would also effectively eliminate key protections provided in Condition No. 4.

Similarly, Special Access Condition No. 7 requires AT&T to accept mediation for any disputes (1) "relating to AT&T/BellSouth's compliance with the rates, terms and conditions set forth in its interstate special access tariffs," and (2) relating "to the lawfulness of the rates, terms,
and conditions in such tariffs.” *See id.* App. F, Special Access Condition No. 7. These requirements are only meaningful if the rates, terms and conditions at issue are set forth in tariffs, because they only apply to such rates, terms, and conditions. Moreover, in the absence of tariff-filing requirements, a purchaser would likely be unaware of the terms and conditions included in service arrangements entered into between AT&T and other customers for OCn/Ethernet. Accordingly, the purchaser could not feasibly challenge such rates, terms, and conditions in a mediation proceeding. In this manner, the mediation provision would be “diminished” absent tariff-filing requirements.

Special Access Condition No. 8 likewise prohibits AT&T from including a bar on purchasing UNEs in a tariffed special access service offering (including one for OCn or Ethernet). *See id.* App. F, Special Access Condition No. 8. Again, this prohibition would have no effect absent tariff-filing requirements. Similarly, Special Access Condition No. 9 requires AT&T to “file one or more interstate tariffs that make available to customers of . . . Ethernet service reasonable volume and term discounts without minimum annual revenue commitments (MARCs) or growth discounts.” *See id.* App. F, Special Access Condition No. 9. This provision would be nullified if AT&T could withdraw its tariffs for Ethernet services.

**IV. Enforcement Of The Merger Condition Tariff-Filing Requirement Precludes AT&T From Taking Advantage Of Any Aspect Of The Forbearance Order.**

In the *AT&T Forbearance Order*, the Commission explained that it “condition[ed] the forbearance relief granted to AT&T on its not filing or maintaining any interstate tariffs for its specified broadband services.” *AT&T Forbearance Order ¶42. Indeed, the Commission concluded that this condition was “necessary to protect consumers and the public interest.” *Id.* It follows therefore, that compliance with the merger conditions precludes AT&T from taking advantage of any aspect of the relief granted in the *AT&T Forbearance Order* until the merger.
conditions expire. This means that the full panoply of dominant carrier regulations must apply to AT&T’s provision of OCn and Ethernet special access services until the expiration of the merger conditions.

In sum, the merger commitments make clear that AT&T has a continuing obligation to file and maintain tariffs with the Commission. In this context, tariffs essentially create a transparent marketplace that ensures compliance with rate reduction and rate freeze requirements while protecting against discrimination and other consequential harms. If AT&T fails to maintain tariffs with the Commission, however, a host of merger commitments would either be nullified outright or at least have their effectiveness diminished substantially. In the absence of tariff-filing protections, AT&T could simply (1) refuse to offer the services protected by the merger commitments, (2) discriminate against unaffiliated broadband providers, and (3) keep prices, terms, and conditions hidden, thus raising significant burdens to enforcing the merger commitments effectively. Absent tariffs, competition would suffer, and the public interest would suffer as well. These harms would be particularly damaging because they would negatively impact broadband deployment to business customers and undermine the Commission’s goal of expanding broadband penetration throughout the United States. Moreover, under the terms of the AT&T Forbearance Order, compliance with the merger conditions requires that AT&T continue to offer OCn and Ethernet special access services subject to dominant carrier regulation. Accordingly, the Commission should promptly issue a declaration requiring AT&T to continue to comply with such dominant carrier regulation.

CONCLUSION

Accordingly, the Commission should promptly issue a declaration requiring AT&T to continue to comply with its merger commitments, and this obligation further requires that AT&T
offer OCn and Ethernet special access services subject to the full panoply of dominant carrier regulations.

Respectfully submitted,

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ATTORNEYS FOR TIME WARNER TELECOM INC.

November 21, 2007
EXHIBIT
AT&T 13-STATE - New Non-Dominant Broadband Forbearance Pricing Contract Process

Date: November 15, 2007

Number: ACCESS07-085

Category: Special Access

Issuing ILECS: AT&T Illinois, AT&T Indiana, AT&T Ohio, AT&T Michigan, AT&T Wisconsin, AT&T California, AT&T Nevada, AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, AT&T Texas and AT&T Connecticut (collectively referred to for purposes of this Accessible Letter as “AT&T 13-State”)

Contact: Account Manager

Effective November 15, 2007, pursuant to the FCC’s Memorandum Opinion and Order, In the Matter of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules With Respect to Its Broadband Services, WC Docket. No. 06-125 (released October 12, 2007) ("Broadband Forbearance Order"), AT&T 13-State, will no longer be offering new Pricing Flexibility Contract Tariffs for certain services. Instead, AT&T 13-State will be offering new Non-Dominant Broadband Forbearance Pricing Contracts (Broadband Service Agreements) for such services. In connection with that change, AT&T 13-State will implement a new Non-Dominant Broadband Forbearance Pricing Contract Process. The new process will only affect optical services and packet-switched services operating at speeds of 200Kbps or greater ordered under Broadband Service Agreements.

As part of the new contract process, a unique nine-digit contract number will be assigned to each Broadband Forbearance Agreement, and the customer must place that number in the PNUM (promotional number) field on all access service requests (ASRs) to ensure the appropriate contract price is applied to the service or services ordered. If the customer fails to include its nine-digit contract number on the ASR, in the PNUM field, the appropriate contract price will not be applied to the service or services ordered. Here is an example of the unique nine-digit contract number:

PCS070001 (PC represents 'per contract'; S represents the Southwest region; 07 represents 2007; 001 represents the contract number) (NOTE: S=Southwest; W=West; M=Midwest; E=East)

AT&T 13-State reserves the right to make any modifications to or cancel the above information prior to the proposed effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter. AT&T 13-State will incur no liability to the customer if such information, mentioned above, is cancelled or is not ultimately put into effect.

Please refer all questions to your Account Manager.
CERTIFICATE OF SERVICE

I, Karen Henein, do hereby certify that on this 11th day of January, 2008, I caused to be served true and correct copies of the foregoing Petition to Reject or, in the Alternative, Suspend and Investigate via hand delivery unless otherwise noted to the following parties:

<table>
<thead>
<tr>
<th>Marlene H. Dortch</th>
<th>Dana R. Shaffer</th>
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<tbody>
<tr>
<td>Secretary</td>
<td>Chief</td>
</tr>
<tr>
<td>Federal Communications Commission</td>
<td>Wireline Competition Bureau</td>
</tr>
<tr>
<td>Room TW-325</td>
<td>Federal Communications Commission</td>
</tr>
<tr>
<td>445 12th Street, SW</td>
<td>Room 5C345</td>
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<tr>
<td>Washington, D.C. 20554</td>
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<tr>
<th>Best Copy and Printing, Inc., (BCPI)</th>
<th>Albert Lewis</th>
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<tbody>
<tr>
<td>Portals II</td>
<td>Chief</td>
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<tr>
<td>Room CY-B402</td>
<td>Pricing Policy Division</td>
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<tr>
<td>445 12th Street, SW</td>
<td>Wireline Competition Bureau</td>
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<td>Room 5A207</td>
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<thead>
<tr>
<th>Patrick Doherty</th>
<th>Pamela Arluk</th>
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<tbody>
<tr>
<td>Director – Access Regulatory Affairs, AT&amp;T</td>
<td>Assistant Division Chief</td>
</tr>
<tr>
<td>Four AT&amp;T Plaza</td>
<td>Pricing Policy Division</td>
</tr>
<tr>
<td>Room 1921</td>
<td>Wireline Competition Bureau</td>
</tr>
<tr>
<td>Dallas, Texas 75202</td>
<td>Federal Communications Commission</td>
</tr>
<tr>
<td>(via overnight mail)</td>
<td>Room 5A207</td>
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<tr>
<th>Debra L. Clemens</th>
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<tbody>
<tr>
<td>Associate Director-Federal Regulatory, AT&amp;T</td>
<td></td>
</tr>
<tr>
<td>1120 20th Street, NW</td>
<td></td>
</tr>
<tr>
<td>Suite 1000</td>
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<tr>
<td>Washington, D.C. 20036</td>
<td>(via e-mail in addition to hand delivery)</td>
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</tbody>
</table>

Karen Henein

Signature

Karen Henein